



BOULT • CUMMINGS  
CONNERS • BERRY PLC

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October 16, 2001

EXECUTIVE SECRETARY

David Waddell, Esq.  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505



Re: *Complaint of Access Integrated Network, Inc. Against BellSouth  
Telecommunications, Inc.*  
Docket No. 01-00808

Dear David:

Please accept for filing the original and thirteen copies of a Motion to Open a Show Cause Proceeding in the above-captioned docket on behalf of Access Integrated Network, Inc. Copies have been forwarded to BellSouth Telecommunications, Inc.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker 

HW/nl  
Attachment

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE: COMPLAINT OF ACCESS     )  
INTEGRATED NETWORK, INC.     )  
AGAINST BELL SOUTH             ) DOCKET NO. 01-00808  
TELECOMMUNICATIONS, INC.     )

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**MOTION TO OPEN SHOW CAUSE PROCEEDING**

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Access Integrated Network, Inc. ("AIN") asks that the Tennessee Regulatory Authority ("TRA") open a show cause proceeding to investigate whether BellSouth Telecommunications, Inc. ("BellSouth") has engaged in a pattern of anticompetitive and discriminatory conduct by marketing service under terms and conditions which are inconsistent with the carrier's tariffs.

As set forth in AIN's complaint, a BellSouth marketing agent recently offered a Knoxville customer three months of free telephone service if the customer would sign up for BellSouth's Key Customer program. In response, BellSouth acknowledged that the offer of free service is not authorized by BellSouth's tariffs. The carrier implied that the offer was made in error and not authorized by BellSouth. Following the filing of AIN's complaint, XO Tennessee, inc. ("XO") filed a complaint involving a nearly identical offer. This time, the illegal offer was made by a BellSouth senior account executive to a customer in Shelby county. Finally, AIN has recently learned of a third incident in Southaven, Mississippi, near Memphis. (A copy is attached.) Although the TRA does not have jurisdiction over the marketing of service in Mississippi, the offer indicates that this illegal marketing scheme is being carried out not only in Tennessee but in other states in the BellSouth region.

As more fully discussed below, this mounting evidence of wrongdoing requires the Authority to carry out its legal duty to enforce state law by opening a show cause investigation.

## DISCUSSION

On September 19, 2001, AIN filed the above-captioned complaint against BellSouth alleging that BellSouth had offered a Tennessee customer three months of free service if the customer would agree to sign a long-term contract for service under the Key Customer program. Such an offer, which is not authorized by any tariff, violates both state law<sup>1</sup> and the rules of the TRA prohibiting anti-competitive conduct.<sup>2</sup>

In response to the complaint, BellSouth admitted that the offer of free service was made by BERRYDirect, a BellSouth marketing agent, and that the offer was inconsistent with BellSouth's approved tariffs. Although BellSouth did not respond directly to AIN's allegation that this offer constitutes a *prima facie* violation of state law and the TRA's rules, the company implicitly acknowledged that the offer was illegal by stating that the offer "is contrary to both the terms of the applicable tariff and BellSouth policy and practice." The company further stated that it had suspended all marketing in Tennessee by BERRYDirect and instructed BERRYDirect to withdraw any "sales proposals" which include offers of free service. Answer, at 7. The Answer does not, however, explain how BellSouth intends to handle customers who have already accepted the illegal offers.

On October 9, 2001, XO Tennessee, Inc. ("XO") filed a similar complaint against BellSouth alleging that BellSouth had once again offered three months of free service to a Tennessee customer if the customer would "com[e] back to BellSouth" by signing a three-year

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<sup>1</sup> See T.C.A. § 65-4-122, which prohibits discriminatory pricing.

<sup>2</sup> See TRA Rule 1220-4-8-.09(2)(C)(3) which prohibits anti-competitive conduct such as offering service at less than cost or at a price other than as authorized in the company's tariffs.

contract under the Key Customer program. *See*, Docket No. 01-00868. The offer was signed by a BellSouth senior account executive. BellSouth has not yet filed a response to XO's complaint.

Based on BellSouth's Answer to AIN's complaint and the evidence submitted by XO of a similar offer, the Authority now has ample basis to open a show cause proceeding, pursuant to T.C.A. § 65-2-106, for the purpose of conducting a complete investigation of this matter and to determine what, if any, sanctions should be imposed against BellSouth.

BellSouth has tacitly admitted the offer of free service was an illegal act, and it is highly unlikely that the offer was an accidental or isolated incident. BellSouth has explained that BERRYDirect markets service to potential customers through "outbound telemarketing." Letter to David Waddell, at 2. Therefore, the sales agent was presumably using a marketing script which had been written and approved by BellSouth. Other sales agents have presumably used the same script containing the same offer. Furthermore, unless BellSouth intended to cheat its customers of the promised free service, BellSouth must have made adjustments to its centralized billing systems so as not to charge the customer for three months of service.<sup>3</sup> Finally, the nearly identical offer described in the XO complaint and a third, similar offer recently made by BERRYDirect to a customer in Southhaven, Mississippi,<sup>4</sup> indicate that this illegal marketing program is being implemented not only in Tennessee but in states throughout the region.

The Authority has not merely the discretion but an affirmative legal duty to enforce the laws under its jurisdiction. T.C.A. § 65-1-213 provides:

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<sup>3</sup> If, on the other hand, BellSouth promised customers three months of free service but failed to provide that service, the carrier has apparently violated Tennessee's consumer protection statutes.

<sup>4</sup> Based on AIN's preliminary investigation, there is no BellSouth tariff in effect in Mississippi, or in any other state, which authorizes BellSouth to offer three months free service as part of the Key Customer program.

**Enforcement – Duties of authority . –** It is the duty of the Tennessee regulatory authority to ensure that the provisions of Acts 1995, ch.305 and all laws of this state over which they have jurisdiction are enforced and obeyed, that violations thereof are promptly prosecuted, and all penalties due the state are collected.

The Authority has not hesitated to open show cause proceedings and to impose sanctions for such matters as violations of the “Do Not Call” statute (T.C.A. § 65-4-401), the “slamming” and “cramming” statutes (T.C.A. § 65-4-125), and even the late filing, on repeated occasions, of financial reports. If the Authority is to continue initiating investigations regarding those matters, the Agency must be willing to take equally strong measures to investigate what appear to be far more serious violations of the law.

Based upon how the TRA staff typically handles “slamming” and “cramming” investigations, a staff-initiated investigation of BellSouth’s marketing tactics would presumably require the company to turn over, among other things, the following information:

1. The names of all Tennessee customers who have been recently contacted by BellSouth or its agents concerning the Key Customer program.
2. Copies of marketing materials, including scripts, used by BellSouth and its agents to sell the Key Customer program.
3. Complete copies of all written offers, including fax cover sheets and e-mails, made under the program.
4. The names of all customers who have recently agreed to accept service under the program.
5. An explanation of how this marketing program originated, the names of all individuals involved, the duration of the program, and copies of all internal documents describing the program.-

6. An explanation of how BellSouth adjusted its billing systems to provide the promised months of free service.

7. An explanation of how BellSouth proposes to treat customers who accepted the illegal offers.

The answers to these questions may well lead to other information requests.

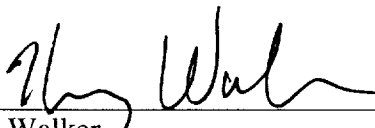
### **CONCLUSION**

This matter is far broader than a dispute between BellSouth and a competing carrier. It involves allegations that, if proven true, may threaten the viability of competition in the local telephone market. For these reasons, it is not appropriate for the agency to treat this matter as simply another carrier-to-carrier complaint. Nor is it appropriate for the agency to expect AIN -- or any CLEC -- to bear the entire cost of conducting an investigation of what appears to be a widespread, illegal marketing program. Just as a violation of federal and state antitrust laws threatens not only competitors but consumers, this illegal marketing scheme could irrevocably hurt ratepayers by depriving them of competitive choices. It is the Authority's duty, AIN respectfully submits, to protect Tennessee consumers by strict enforcement of the TRA's rules and statutes. The Authority now has before it a virtual admission by BellSouth of one instance of illegal, anticompetitive activity as well as evidence that such activity seems to be part of a larger pattern and practice. The Authority's duty is clear.

For these reasons, AIN moves the TRA to open a show cause docket for the purpose of investigating the nature and extent of BellSouth's illegal offers of free telephone service as set forth in AIN's complaint.

Respectfully submitted,

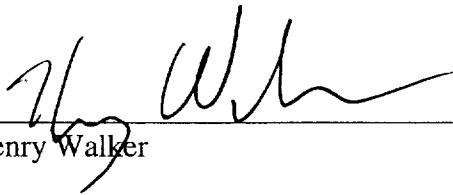
BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219  
(615) 252-2363

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 16<sup>th</sup> day of October, 2001.

Guy Hicks, Esq.  
BellSouth Telecommunications, Inc.  
333 Commerce St., Suite 2101  
Nashville, TN 37201-3300

  
\_\_\_\_\_  
Henry Walker



your sell tech connection

L.M. Berry & Company  
3220 S. Wisconsin St A  
Joplin, MO. 64804  
(417) 206-5400

# FAX COVER SHEET

**TO:** LARRY **FROM:** Kim Rickey

Fax: \_\_\_\_\_ Fax: (417) 206-6911  
ext. \_\_\_\_\_

Phone: 313 342 0550 Phone: (877) 304-6163

Re: DISCOUNT ON SERVICE Date: 9/7/01

Total numbers of pages, including cover sheet: 6

HERE IS THE OFFER FOR YOU TO LOOK AT. THE FIRST FORM IS A LOA, WHICH ALLOWS US TO CALL YOUR CURRENT COMPANY AND SWITCH YOU BACK TO BELLSOUTH. THE SECOND, IS THE TERM CONTRACT THAT STATES YOU WILL RECEIVE THE 14% DISCOUNT FOR THE NEXT THREE YEARS. IF THE QUOTE IS COMPARABLE TO WHAT YOU ARE PAYING, SIMPLY SIGN BOTH FORMS AND FAX BACK TO THE NUMBER ABOVE. SHOULD YOU HAVE ANY QUESTIONS OR CONCERNS, FEEL FREE TO GIVE ME A CALL. THANK YOU FOR YOUR TIME. KIM RICKEY

Account Number: 662-342-6550  
Account Billing Name: \_\_\_\_\_  
Billing Address: 1. SOUTHHAVEN MS 38671

Telephone Number(s) covered by this request: 602

This letter is to provide authorization to:

- ☒ change local exchange carrier to BellSouth  
☒ freeze local exchange carrier, freeze to BellSouth  
☒ change intra-LATA long distance carrier to BellSouth  
☒ freeze intra-LATA long distance carrier to BELLSOUTH  
☐ freeze inter-LATA long distance carrier to \_\_\_\_\_

I understand that I may select only one primary intra-LATA long distance carrier, one primary local exchange carrier, and one primary inter-LATA long distance carrier for any one telephone number. I also understand that the primary inter-LATA long distance carrier may be different from the primary intra-LATA long distance carrier or primary local exchange carrier and that the primary intra-LATA long distance carrier may be different from the Primary local exchange carrier.

I further understand that there may be a charge for each provider change and could involve a charge in changing back to the previous primary carrier.

I have elected to subscribe to the 5 BUSINESS LINES W/ 14% DISCOUNT  
(name of product or service that is being promised or offered in exchange for the switch). This  
service INCLUDES THREE MONTHS OF COMPLIMENTARY SERVICE.  
(including a description of any and all terms, conditions or charges that will be incurred).

I am authorized to request changes on this account.

LARRY HANKINS Name (Printed)  
Larry Hankins Signature



This signature will result in a change of your provider.

Date: 9/7/01

Agent: Kim Rickey



### BellSouth Program Subscriber Election

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The undersigned Subscriber desires to participate in the BellSouth Advantage Plus or Business Medallion Programs (the "Program"), and agrees to the following:

Subscriber is a former BellSouth customer within the last two years of enrollment and currently does not have service with BellSouth, wants to return to BellSouth, and anticipates having a minimum of Seventy dollars and a maximum of Twelve Thousand Five Hundred dollars in total billed BellSouth revenue\* per month. Subscriber agrees to keep local services with BellSouth under its General Subscriber Services Tariff or Private Line Services Tariff for a minimum of twenty-four (24) or thirty-six (36) months from the enrollment date in the Program. The enrollment date shall be determined by the first billing cycle date in which Subscriber receives the discount off its BellSouth regulated charges as set forth in paragraph 1, below.

1. Subscriber agrees to the following term and discount (Check One):

Monthly BellSouth Total Billed Revenue	Months 1 - 7	Months 8 - 15	Months 16 - 24
\$70.00 - \$12,500.00	10%	15%	20%
<input type="checkbox"/> 24 Month	Months 1 - 12	Months 13 - 24	Months 25 - 36
<input checked="" type="checkbox"/> 36 Month	15%	20%	25%

\* The total billed BellSouth revenue is based upon the applicable BellSouth tariffs and consists of end-user monthly total billed BellSouth account revenue at the customer's location(s) excluding: nonregulated charges, taxes, late payment charges, charges billed pursuant to federal or state access service tariffs, charges collected on behalf of municipalities (including, but not limited to services for 911 service and dual party pay services), and charges for services provided by other companies.

2. For each month during which this Election is in effect, Subscriber will receive the discount associated with Subscriber's total billed BellSouth revenue\* for that particular month in each state as approved by appropriate regulatory authority. If Subscriber's total billed BellSouth revenue\* falls below the minimum revenue per month, discounts will not be applied for that customer. The applied discounts will appear as a credit in the Other Charges and Credits (OC&C) section of the Subscriber's bill. All business local service will continue after the Election term has expired, after which Subscriber agrees to pay full tariffed charges.
3. In the event Subscriber discontinues business local service with BellSouth prior to the expiration of the term, Subscriber shall pay to BellSouth the amount of discounted charges for its local services that the Subscriber had received as a result of Subscriber's participation in the Program. Subscriber is responsible for repayment of all accounts received associated with this Election. In addition to the reimbursement of the discounts, termination liability charges for individual services pursuant to tariff may apply.
4. In the event Subscriber is switched without authorization by another carrier for business local service, Subscriber must call its BellSouth Small Business Office to continue the Program once the improperly switched account has been returned to BellSouth.
5. In the event Subscriber changes service locations for business local service, Subscriber shall notify its BellSouth Small Business Office to advise of the change in service location.
6. This Election is subject to and controlled by the provisions of BellSouth's lawfully filed tariffs and promotions, including any changes therein as may be made from time to time.

#### SUBSCRIBER

By: Larry Hankins  
(Signature)  
LARRY HANKINS  
Print Name  
President  
Title  
9/12/01  
Date  
Version 080901

(Business Address)  
Southaven, MS 38671  
City/State  
(662) 393-6286  
Phone Number  
(Additional Business Telephone Number(s))  
\_\_\_\_\_  
Email Address (Optional)  
\_\_\_\_\_

Representative Jim Rickard  
Telephone # for Questions 1-877-304-6663  
Ext. 5458

CUID \_\_\_\_\_